

**Chatham Protective By-law
Section V**

**Proposed Revisions
for
Planning Board Discussion**

August 21, 2007

Chatham Zoning By-law Discussion

Section V

Nonconforming Lots, Buildings, Uses

**Single & Two-family
Residential Structures**

Chatham Zoning By-law Discussion

Background

Massachusetts General Laws

Chapter 40A, Section 6

sets the ground rules

Chatham Zoning By-law Discussion

Background

Massachusetts General Laws

Chapter 40A, Section 6

**Treats single & two-family structures
as a special category**

Massachusetts General Laws, Chapter 40A, Section 6

CHAPTER 40A. ZONING

Chapter 40A: Section 6. Existing structures, uses, or permits; certain subdivision plans; application of chapter

Section 6. Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent **except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure.** Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to establishments which display live nudity for their patrons, as defined in section nine A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section nine A.

Unanswered questions

- What kinds of alterations, extensions, etc. do not increase the nonconforming nature of a single or two-family structure?

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Extreme Local Policy

- Any and all exterior alterations, extensions, etc. increase the nonconforming nature of a single or two-family structure.

Unanswered questions

- What kinds of alterations, extensions, etc. do not increase the nonconforming nature of a single or two-family structure?

Typical Local Policy

- Some alterations, extensions, etc. do not increase the nonconforming nature of a single or two-family structure.

Chatham Protective Zoning By-law

A. Enlargement, Extension or Change

As provided in Chapter 40A Section 6 MGL, a nonconforming single or two family dwelling may be altered or extended provided that the Zoning Enforcement Officer determines that doing so does not increase the nonconforming nature of such dwelling. For dwellings with setback nonconformities, any addition within the required setback area (including an increase in building height) shall be deemed to increase the nonconforming nature of the dwelling. Such alterations, extensions or changes shall require a Special Permit from the Zoning Board of Appeals.

Other pre-existing nonconforming structures or uses may be extended, altered, or changed in use by Special Permit, provided that the Zoning Board of Appeals finds that such extension, alteration, or change will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

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Goals for Bylaw Revision

- **Bylaw tells applicants all they need to know**
- **Bylaw produces predictable results for Town**

Problems with Current Bylaw

- **ZE0 tells applicants all they need to know**
- **Bylaw produces unpredictable results for Town**

Proposals for Discussion

- Define in writing what does not increase the nonconforming nature of a dwelling
- For applications that do increase the nonconforming nature of a dwelling:
 - Sharpen ZBA criteria for “substantially more detrimental to the neighborhood...”

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The lawful use or location of any building, structure or land existing at the time of enactment or subsequent amendment of this Bylaw may be continued, although such building, structure or use does not conform with the provisions of this Bylaw, subject to the following conditions and exceptions:

A. Single and Two-Family Residential Structures

1. As-of-Right Construction

As provided in Chapter 40A, Section 6 of MGL, lawfully nonconforming single and two-family residential structures may be altered, reconstructed, or extended upon the issuance of a building permit if such alteration, reconstruction, or extension does not result in a change of use and does not increase the nonconforming nature of said structure. The following alterations, reconstructions, or extensions are deemed not to increase the nonconforming nature of a structure:

Note: Blue underline indicates proposed new language

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- a. Conforming construction to a structure located on a lot that is nonconforming only because of its lot area, shape, or frontage; the aggregate building coverage of new and existing construction may not exceed the maximum building coverage in the subject zoning district as provided in this Bylaw.
- b. Construction occurring entirely within an existing structure, including structural changes and interior alterations.
- c. Relocation, infilling, or addition of windows, doors, skylights, louvers, or similar openings in the exterior of a structure, provided that the façade of the structure on which those changes occur conforms to the yard requirements of this Bylaw or faces the street.
- d. Demolition or relocation of a structure or portions of a structure that reduces the extent of an existing nonconformity; such demolition or relocation must comply with any applicable restrictions of the Chatham Historical Commission or other governmental authority having jurisdiction over demolition.

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- e. Conforming additions to a structure not conforming to the dimensional requirements of this Bylaw, provided that no nonconforming element of the structure is extended or increased and provided that, in cases where existing building coverage is nonconforming, the resulting structure, in the aggregate, is not increased in building coverage by more than ten percent since the structure first became nonconforming.
- f. Repair, reconstruction, or replacement of any nonconforming portions of a structure, provided that such repair, reconstruction or replacement does not exceed the original in footprint, area, or volume, and that the area and/or volume of said portions of the structure do not exceed twenty-five percent of the area or above-grade volume of the entire structure.
- g. Dormer additions that do not extend horizontally beyond the face of the existing vertical walls of the story on the same façade directly below; such dormer additions shall not bring the total (existing and new) aggregate dormer area, as measured in plan, to more than 50 percent of the horizontally projected area of the roof plane on which such dormers are constructed.

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- h. Total replacement of an existing nonconforming structure, which replacement conforms to all dimensional requirements of this Bylaw .

2. Construction by Special Permit

As provided in Chapter 40A, Section 6 of MGL, alterations, reconstructions, or additions to lawfully nonconforming single and two-family residential structures, which alterations, reconstructions, or additions increase the nonconforming nature of a structure, shall not be permitted unless there is a finding by the Zoning Board of Appeals that such alteration, reconstruction, or addition shall not be substantially more detrimental than the existing structure to the neighborhood. Alterations, reconstructions, and additions that do not conform to one or more of the types described above under Section V.A.1. “As-of-Right Construction” are deemed to increase the nonconforming nature of a structure.

a. Special Permit Criteria

Note: Additional proposed revisions to follow at future Planning Board meetings